

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
CENTRAL DIVISION

FILED  
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2005 DEC 14 PM 3:11  
Civil Action No. 05-40071-FDS

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CHRISTIAN SCHWENK  
Plaintiff,

v.

AUBURN SPORTSPLEX, LLC,  
DENNIS NATOLI, JOHN NATOLI,  
AND PETER NATOLI,  
Defendants

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**DEFENDANT'S AUBURN SPORTSPLEX, LLC,  
DENNIS NATOLI, JOHN NATOLI AND  
PETER NATOLI ASSENTED TO MOTION TO AMEND  
ANSWER TO PARAGRAPH 13 OF THE COMPLAINT**

Pursuant to FED. R. CIV. P. Rule 15(a), the Defendants Auburn Sportsplex, LLC, Dennis Natoli, John Natoli and Peter Natoli (collectively "Defendants") hereby move to amend their answer to Paragraph 13 of Plaintiff's Complaint. In support of this motion, Defendants state as follows:

1. On May 6, 2005, Plaintiff filed civil action no. 05-40071FDS against the Defendants ("Complaint").
2. Paragraph 13 of the Complaint contained the following averment:

On or about August 20, 2003, Plaintiff executed a document entitled "Ownership Purchase Agreement" (hereinafter "the Agreement"). The Agreement was also signed by Defendants John V. Natoli, Peter Natoli and Dennis Natoli. Said signing occurred in Auburn, Massachusetts.

3. The Defendants mistakenly admitted to date and location that the Plaintiff alleged to have executed a document. Defendant simply seeks to amend the answer to deny the date and location of Plaintiff's signature. Accordingly, the Defendants seek to amend their answer as follows:

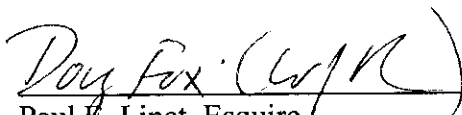
Defendants admit that Plaintiff executed a document entitled "Ownership Purchase Agreement". Defendants further admit that John V. Natoli, Peter Natoli

and Dennis Natoli also signed an Agreement. Defendants deny the remaining allegations contained in Paragraph 13 of Plaintiff's Verified Complaint and deny that certain handwritten changes to the Agreement were agreed to by the Defendants.

4. As of the date of the filing of this motion, no party to this action has commenced any discovery.
5. "[A] party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." FED. R. CIV. P. Rule 15.
6. Plaintiff is in no way prejudiced by the above requested amendment and this motion is well within the Scheduling Order regarding the period to amend pleadings.

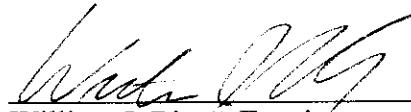
Accordingly, Defendants request that this Motion be allowed and the attached First Amended Answer of Defendants Auburn Sportsplex, LLC, Dennis Natoli, John Natoli and Peter Natoli be deemed filed.

Assented to:  
Christian Schwenk  
by his attorneys,

  
Paul E. Linet, Esquire  
Law Offices of Paul E. Linet, P.C.  
PO Box 533  
Acton, MA 01720

Douglas L. Fox, Esquire  
Shumway, Giguere & Fox, P.C.  
19 Cedar Street  
Worcester, MA 01609

Auburn Sportsplex, LLC  
Dennis Natoli, John Natoli,  
and Peter Natoli  
by their attorneys,

  
William J. Ritter, Esquire  
BBO# 552397  
Natañia M. Davis  
BBO# 651838  
Poiani Hurley Ritter & Salvidio, LLP  
446 Main Street  
Worcester, MA 01608  
Phone: 508.798.2480

Certification of Local R. 7.1(A)(2)

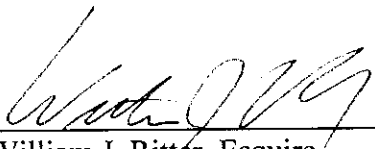
I hereby certify that pursuant to Local R. § 7.1(A)(2), I have conferred with opposing counsel, Paul E. Linet, Esquire and Douglas L. Fox, Esq. in good faith to resolve and/or narrow the issues and counsel has assented to this motion.

CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2005, I served a copy of the within Defendants' Auburn Sportplex, LLC, Dennis Natoli, John Natoli and Peter Natoli Assented to Motion to Amend Answer to Paragraph 13 of the Complaint by mailing same postage prepaid upon:

Paul E. Linet, Esquire  
Law Offices of Paul E. Linet, P.C.  
PO Box 533  
Acton, MA 01720

Douglas L. Fox, Esquire  
Shumway, Giguere & Fox, P.C.  
19 Cedar Street  
Worcester, MA 01609

  
\_\_\_\_\_  
William J. Ritter, Esquire

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Civil Action No. 05-40071-FDS

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CHRISTIAN SCHWENK  
Plaintiff,

v.

AUBURN SPORTSPLEX, LLC,  
DENNIS NATOLI, JOHN NATOLI,  
AND PETER NATOLI,  
Defendants

---

FIRST AMENDED ANSWER OF DEFENDANTS AUBURN SPORTSPLEX,  
LLC, DENNIS NATOLI, JOHN NATOLI AND PETER NATOLI

Auburn Sportsplex, LLC, Dennis Natoli, John Natoli, and Peter Natoli (hereinafter collectively "Defendants") respond to the corresponding numbered paragraphs of Christian Schwenk's (the "Plaintiff") Verified Complaint as follows:

1. Defendants admit the allegations contained in Paragraph 1 of Plaintiff's Verified Complaint.
2. Defendants admit the allegations contained in Paragraph 2 of Plaintiff's Verified Complaint.
3. Defendants admit the allegations contained in Paragraph 3 of Plaintiff's Verified Complaint.
4. Defendants admit the allegations contained in Paragraph 4 of Plaintiff's Verified Complaint.
5. Defendants admit the allegations contained in Paragraph 5 of Plaintiff's Verified Complaint.
6. Defendants admit the allegations contained in Paragraph 6 of Plaintiff's Verified Complaint.
7. Defendants admit the allegations contained in Paragraph 7 of Plaintiff's Verified Complaint.

8. Defendants admit the allegations contained in Paragraph 8 of Plaintiff's Verified Complaint.

**Count I: Production of Records**

9. Defendants submit that the document speaks for itself. Therefore, no responsive pleading is required.
10. Defendants deny the allegations contained in Paragraph 10 of Plaintiff's Verified Complaint.
11. Defendants admit to having sent to Plaintiff a package containing information about a sports facility at Plaintiff's request. Defendants further state that the documents speak for themselves, therefore, no responsive pleading is required.
12. Defendants admit that Plaintiff transferred \$100,000 to ASP's account. Defendants deny the remaining allegations contained in Paragraph 11 of Plaintiff's Verified Complaint.
13. Defendants admit that Plaintiff executed a document entitled "Ownership Purchase Agreement". Defendants further admit that John V. Natoli, Peter Natoli and Dennis Natoli also signed an Agreement. Defendants deny the remaining allegations contained in Paragraph 13 of Plaintiff's Verified Complaint and deny that certain handwritten changes to the Agreement were agreed to by the Defendants.
14. Defendants submit that the document speaks for itself, therefore, no responsive pleading is required.
15. Defendants admit to having received a letter dated April 16, 2004 from Plaintiff. As for the remaining allegations contained in Paragraph 15, Defendants submit that the document speaks for itself, therefore, no responsive pleading is required concerning the letter's content.
16. Defendants admit to having received a letter dated April 16, 2004 from Plaintiff's representative.
17. Defendants admit to having received a letter dated April 19, 2004 from Plaintiff's representative. Defendants deny the remaining allegations contained in Paragraph 17 of Plaintiff's Verified Complaint.
18. Defendants admit to having received a letter dated April 19, 2004 from Plaintiff's representative.
19. Defendants deny the allegations contained in Paragraph 19 of Plaintiff's Verified Complaint.

20. Defendants deny the allegations contained in Paragraph 20 of Plaintiff's Verified Complaint.
21. Paragraph 21 contains conclusions of law to which no responsive pleading is required. To the extent a response is required, denied.

**Count II: Appointment of Receiver & Accounting**

22. Defendants reassert and incorporate by reference their answers contained in the preceding paragraphs 1 through 21.
23. Defendants deny the allegations contained in Paragraph 23 of Plaintiff's Verified Complaint.
24. Defendants deny the allegations contained in Paragraph 24 of Plaintiff's Verified Complaint.
25. Defendants deny the allegations contained in Paragraph 25 of Plaintiff's Verified Complaint.
26. Paragraph 26 contains conclusions of law to which no responsive pleading is required. To the extent a response is required, denied.

**First Defense**

The Complaint fails to state a claim upon which relief may be granted.

**Second Defense**

The Plaintiff did not commence this action within the time prescribed by the applicable statute of limitations.

**Third Defense**

Plaintiff consented and/or acquiesced to the acts of the shareholders.

**Fourth Defense**

Plaintiff has had access to all requested and relevant documents. The Defendants are ready and willing to provide Plaintiff with all relevant documents.

**Fifth Defense**

This Court lacks subject matter jurisdiction.

**Sixth Defense**

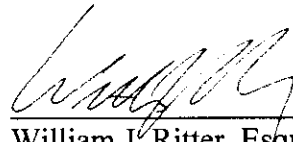
Plaintiff's Complaint is barred by estoppel.

**Seventh Defense**

Plaintiff's Complaint is barred by ratification.

The Defendants demand a trial by jury on all counts so triable.

Auburn Sportsplex, LLC  
Dennis Natoli, John Natoli,  
and Peter Natoli  
by their attorneys,

A handwritten signature in black ink, appearing to read 'William J. Ritter', is written over a horizontal line.

William J. Ritter, Esquire  
BBO #552397  
Natañia M. Davis, Esquire  
BBO # 651838  
Pojani Hurley Ritter & Salvidio, LLP  
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